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JAN 21 1982

Nos. 80-2070, 81-24

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

SUMITOMO SHOJI AMERICA, INC.,
Petitioner and Cross-Respondent,

v.

LISA M. AVIGLIANO, DIANNE CHENICEK, ROSEMARY T. CRISTOFARI, CATHERINE CUMMINS, RAELLEN MANDELBAUM, MARIA MANNINA, SHARON MEISELS, FRANCES PACHECO, JOANNE SCHNEIDER, JANICE SILBERSTEIN, REIKO TURNER and ELIZABETH WONG,
Respondents and Cross-Petitioners.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND BRIEF OF THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY OF THE GOVERNMENT OF JAPAN, *AMICUS CURIAE*

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January 18, 1982

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Motion for Leave to File *Amicus Curiae* Brief

Pursuant to Rule 36(3) of the Rules of this Court, the Ministry of International Trade and Industry of the Government of Japan moves for leave to file the attached brief as *amicus curiae* to bring its views to the attention of the Court concerning the important questions presented by this case. Petitioner and cross-respondent, Sumitomo Shoji America, Inc., has consented to the filing of this brief; the respondents and cross-petitioners have not.

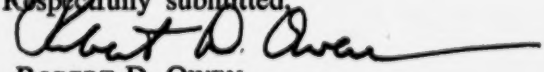
Japanese law entrusts to the Ministry of International Trade and Industry broad responsibility and authority on behalf of the Government to adopt and implement Japan's

international trade and economic policies. Tsushosangyosho Secchi Ho (Ministry of International Trade and Industry Establishment Law), Law No. 275 of 1952 (as amended), Articles 3(1) and 4(19). The Court's resolution of this matter will be extremely important to the future course of private Japanese direct investment in the United States, which is an important element in the economic relationship of the United States and Japan.

The Ministry wishes to ensure that the Court is fully apprised of its view that the issues herein presented are important to bilateral economic cooperation between Japan and this country, and only a direct submission by the Ministry, in the form of the annexed *amicus curiae* brief, will so ensure.

For the reasons stated and in the interests of strengthening bilateral economic cooperation between Japan and the United States, the Ministry of International Trade and Industry of the Government of Japan respectfully requests that the Court receive and consider the attached brief.

Respectfully submitted,



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BRIEF OF THE MINISTRY OF INTERNATIONAL TRADE AND INDUSTRY OF THE GOVERNMENT OF JAPAN, *AMICUS CURIAE*

Interest of *Amicus Curiae*

The Ministry of International Trade and Industry of the Government of Japan ("MITI") welcomes the opportunity to present to the Supreme Court of the United States its views regarding certain issues involved in *Sumitomo Shoji*

America, Inc. v. *Avigliano, et al.*, Nos. 80-2070 and 81-24, now before the Court. MITI, having broad responsibility for Japan's international trade and economic relations, offers this Statement in the interests of strengthening bilateral economic cooperation through mutually beneficial direct investment.

Summary of Statement

Japanese direct investment in the United States is an important element in the improvement of bilateral economic relations: such investment supplies needed capital, productive technology and jobs, and it contributes to the reduction of bilateral trade frictions between our two countries. The process of direct investment is sensitive to the investment climate in the United States. A critical element of that investment climate is the ability of foreign direct investors to manage and control their establishments in the United States with their own managerial personnel. The Ministry of International Trade and Industry supports the position of Sumitomo Shoji America, Inc. in this case because it believes that a decision by the Court upholding the management rights of foreign investors would contribute positively to a continued favorable investment climate and to mutually beneficial economic relations.

Statement of the Ministry of International Trade and Industry

1. This case is of the greatest importance to future private Japanese direct investment in the United States. A decision impairing the ability of Japanese investors to employ executives of their choice to manage and control their enterprises in the United States would impede and

could well reduce the future volume of such private direct investment.

2. The steady increase of Japanese direct investment in the United States not only benefits private investors but also results in great benefit for both the United States and Japan. Japanese direct investment in the United States has steadily increased, reaching approximately $4.2 billion as of the end of 1980, according to data published by the United States Department of Commerce.[1] According to Japanese government statistics, on the basis of investment permits and investment reports filed with the Government, Japanese direct investment in the United States reached approximately $8.9 billion as of the end of March 1981.

Also, according to the United States Department of Commerce, Japanese direct investment in the United States resulted in the direct employment of approximately 95,000 individuals as of 1979.[2] If employment resulting indirectly from such investment is included, the total employment created amounts to nearly 350,000 persons.[3] Such Japanese direct investment is helping to revitalize certain United States industrial sectors and contributes favorably to the reduction of the problem of the trade imbalance. For such reasons, MITI believes that the importance of Japanese

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[1] United States Department of Commerce, Survey of Current Business, August 1981, at 47.

[2] United States Department of Commerce, Survey of Current Business, May 1981, at 50.

[3] Japan Society, Inc., *The Economic Impact of the Japanese Business Community in the United States, 1979,* Public Affairs Series 10 (hereinafter "Economic Impact Study"), at 1-2. This study, done for the Japan Society by the Conservation of Human Resources Project, Columbia University, found that as of 1978 Japanese companies in the United States employed 10,500 Japanese and 81,300 Americans and indirectly created an additional 261,000 jobs for Americans through their purchase of goods and services. *Id.* at 1.

direct investment in the United States will continue to grow.

As the report to the President of the United States and the Prime Minister of Japan by the Japan-United States Economic Relations Group emphasized, the free flow of investment capital is as important as the free flow of trade in promoting economic efficiency. Such efficiency means, internationally, the availability to consumers of inexpensive, high quality goods and the opportunity for domestic firms to expand their markets abroad. Domestically, such efficiency means the improvement of productivity, more effective employment of labor and capital, and the achievement of economies of scale conducive to economic growth.[4] An indication of the value of Japanese direct investment is that many State governments have actively solicited and encouraged Japanese direct investment within their borders in the belief that such investment will contribute to their economic development.

Similarly, from the Japanese perspective, direct investment in the United States plays a most important role in helping to maintain and develop markets, in alleviating trade frictions and in overcoming various domestic production constraints.

Accordingly, MITI considers that such direct investment is beneficial to both countries and looks forward to its further smooth expansion.

3. In order to encourage further appropriate expansion of direct investment in the United States by Japanese firms MITI believes it is essential to continue to maintain a favorable investment climate. In that connection, MITI con-

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[4] Supplemental Report of the Japan-United States Economic Relations Group, October 1981, at 11, 33.

siders that the ability of Japanese investors to dispatch executive employees from Japan to manage and control their overseas subsidiaries is of the greatest importance and indeed is a basic prerequisite for the successful management of their overseas business activities.

If the Court's decision in this case should appear to impair that ability, it is foreseeable that investors will be greatly concerned, and such concern could become a major impediment to further direct investment in the United States, not only by Japanese firms but by foreign firms generally.

While Japanese direct investors are concerned about their ability to appoint managers for their overseas enterprises, it should be pointed out that Japanese companies operating in the United States, consistent with the practice of their entirely domestic counterparts, employ large numbers of Americans. The ratio of American to Japanese employees varies from industry to industry, being higher in manufacturing firms and lower, of course, in firms such as trading companies (of which Sumitomo is an example), not only because of the absence of blue collar workers, but also owing to the necessity for executives to be thoroughly familiar with such matters as the Japanese market, customers and business practices.[5] Indeed, the qualification of Japanese employees who are to be sent to the United States is subject to strict examination by the United States authorities as part of the review of their visa applications.

4. A decision in the instant case that would impair the existing right of Japanese companies to dispatch executive employees to manage and control their subsidiaries in the

[5] The ratio of Americans to Japanese directly employed by Japanese-owned firms are as follows: in the case of trading companies, 1.4 to 1; for manufacturing enterprises, 28 to 1; for all Japanese enterprises, 8 to 1. Economic Impact Study, *supra*, n.3, at 21.

United States would, in MITI's view, tend to discourage direct investment to the detriment of both the United States and Japan. It is our sincere hope that the Court will consider fully the implications of this case for Japanese and other foreign investors and will reach a decision favorable to the continuation of mutually advantageous foreign direct investment in the United States.

Conclusion

For the reasons stated above the Ministry of International Trade and Industry of the Government of Japan submits this statement in support of the interests of Japanese direct investors in the United States as represented in this case by Sumitomo Shoji America, Inc.

Respectfully submitted,

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